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AUTHOR Jassem, Harvey C.
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ABSTRACT

In 1928, the National Association of Broadcasters (NAB) developed a voluntary code of ethics to reduce public criticism of radio. Critics claimed that these NAB efforts at self-regulation were either too lenient or so strong that they posed antitrust problems. Still others focused on the issue of accountability in the code making process, suggesting that changes over the years reflected political pressures more than concern for the public. An understanding of the code and its implementation indicates that all three observations had some truth to them. The code did not demand strict adherence of broadcasters but was very strict for nonbroadcasters such as advertisers. While the Code appears to have had some impact on broadcast content, impact that even many nonbroadcasters would rate positively, that impact was unenforceable and was ultimately designed to meet the interests of the broadcasters. In January 1983, the NAB disbanded its Code Authority Board, thereby ending the industry's organized self-regulation. The loss of the NAB's codes should not significantly alter the degree to which the public is protected. (HTH)

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"AN EXAMINATION OF SELF REGULATION OF BROADCASTING"

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Harvey C. Jassem

Assistant Professor

Department of Communication
University of Hartford
West Hartford, CT 06117

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In January, 1983, the National Association of Broadcasters disbanded its Code Authority Boards, thereby ending the broadcast industry's organized self-regulation which had been in operation nearly as long as commercial radio. This paper examines the history, operation and role of broadcast self-regulation and assesses the significance of its cessation, particularly at a time when the Federal Government is reducing its role in broadcast regulation as well.

Self Regulation in General

> "one of the most important and neglected . . . characteristics of regulation in America . . . has been self regulation."[1]

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Many industries, trades, and professions "regulate" themselves. For some, the self-regulations have teeth and are enforceable, for others, they appear to be no more than self-aggrandizing platitudes whose only purpose is to hang, neatly framed, on office walls. Rational profit-maximizing industries regulate themselves essentially for one reason: to enhance or protect their profit position. An offshoot of the self-regulatory process may be a well protected consumer, but that seems to be an externality rather than the major rationale for self-regulation. Neville Miller, in a 1941 Annals article, noted that

> Industrial self-regulation is enlightened industrial self interest. Its purpose is to win public confidence and good will . . . . Through it, industry volunteers do for itself what some would have done through legislative enactment.[2]

This is nothing new. When the American West was opening up, for example, and towns were emerging to handle cattle trading, many farmers and cattlemen regulated aspects of cattle driving and cattle trading so as to ensure the safety and health of their own herds.[3] While in this case such measures were often taken by the traders because no government was available to create and enforce regulations, in other cases self-regulation emerged as a means of avoiding government regulations. During the latter half of the 1800s, for example, the Chicago Board of Trade "enacted stringent rules for self discipline."[4] Those rules, however, were not enforced.[5] Due to problems in the commodities trading business, the federal and state governments threatened to intervene. Those threats, coupled with "the proliferation of progressive reform movements that swept Chicago," led the Chicago Board of Trade to more efficiently regulate itself.[6]

Self regulation, in the case of the Chicago Board of Trade, and generally, is responsive to the economic and political climate surrounding the industry. The operation is such that powerful representatives of an industry band together for their mutual good. They are the same persons (or in the same organizations) responsible for lobbying and protecting their common interests. Self regulation may be an attempt to institutionalize accepted standards of practice. Accepted, that is, by those making the regulations. Established medical associations, for example, traditionally dismissed "alternative" healing professions, such as chiropractics, claiming that such forms of treatment were not scientifically

validated. The public, the medical associations would say, ought to be warned against confusing such practices with established and certified medical practices. Note, that while there may be some value to the consumer in such self-regulation, there might just as likely be no value to the consumer. In this example the medical industry protects its reputation by disavowing practices it is not confident of, and it insulates its market position by refusing to confer ligitimacy on its "competitors." Businesses, often with the support of the agency responsible for regulating them, can do things under the guise of self-regulation (ostensibly for the public good) that might otherwise be considered anti-competitive or in violation of antitrust laws.[7] Self regulation is regulation for, of; and by those doing the regulating.

Self Regulation in Broadcasting: The Theory

The media in the United States have a unique relationship with the government. Media are generally privately owned. We tend to think they can have important impacts on individuals and societies at large. And some even rely on government-protected public resources for their very existence. Yet (or maybe because), as central as the media are to our survival and development, the government is prohibited from regulating media as much as it can regulate other industries. The First Amendment's proscriptions against government infringement of free speech and press have not been interpreted as being absolute, but they are compelling. That is not to say that there are no governmental rules or regulations affecting the press. There are. They tend to allow, indeed encourage, private ownership. They grant much freedom and even assist members of the press in their efforts to uncover government secrets. While there are limits to the press' freedom (such as laws protecting peoples' rights to privacy and untarnished reputations), the limits are relatively small. The roots for this press freedom may have evolved from what has become known as "libertarian" theory. That theory, as developed by Jefferson, Locke, etc., held that men and women have a natural right to think, speak, and develop their ideas freely. John Erskine spelled out the concept in the eighteenth century in England when he noted that

> every man, not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal

> reason of the whole nation, either upon subjects of government in general, or upon that of our own particular country.[8]

No society, however has a totally free media system. In western democracies, the notion of a "socially responsible" press has come to replace the concept of an unbridled press doing its own thing for its own good.

> Social responsibility theory accepts the role of the press in servicing the political system, in enlightening the public, in safeguarding the liberties of the individual; but it represents the opinion that the press has been deficient in performing those tasks. It accepts the role of the press in servicing the economic system, but would not have this task take precedence over such other functions as promoting the democratic process or enlightening the public.[9]

The question is one of how to regulate media for the public good while safeguarding the media's freedom from regulation. The American answer seems to be that of holding media legally accountable, by "expecting" ethical behavior from the media, by regulating by the "raised eyebrow," and by the "regulation" of the marketplace.

For example, responding to perceived excesses in media coverage of criminal proceedings, the government regulated the conduct of trials (thereby affecting press cpverage tp sp,e degree). Responding to perceived excesses in violent media portrayals, the government held hearings and issued warnings about gratuitous violence on the media. And responding to excesses of some of their peers during the sensationalist "yellow journalism" era, journalists established their own codes of ethics.

The broadcast media depend on a limited public resource for their existence: the electromagnetic spectrum. The Federal Radio Commission, and later the Federal Communications Commission, was established to administer the use of the broadcast spectrum in the public interest. Broadcasters, while wanting government regulation of frequency or channel allocations, have not been fond of content or ownership regulation. They have been subject to such additional regulation for several reasons. Broadcasters are expected to serve larger public interest so long as they rely on a limited public resource. Broadcast regulation is not only legal, it is sometimes politically rewarding for politicians who rely heavily on the media and who want to please constituents--many of whom get upset with the highly visable broadcast media. In an appropriate response to this, broadcast media representati-

ves decided very early in the history of commercial broadcasting to regulate themselves. The principles of those regulations were designed to attend to the concerns of the public, the regulators, and the advertisers, while--or, so that--broadcasters could go about their business in the least fettered and most protected fashion.

Self Regulation in Broadcasting: The Early History

The National Association of Broadcasters was established in 1922-1923 as the trade association of existing broadcasters.[10] It was designed to represent broadcast interests to other industries, the government, and the public. Responding to public criticism of radio, and in an "attempt to forestall further government regulation," the NAB decided, in 1928, "to reduce public criticism by developing a voluntary Code of Ethics."[11] That Code, which consisted of universally-appealing platitudes and lacked enforcement provisions, was replaced in 1929 with more specific guidelines (e.g., "No broadcaster shall permit the broadcasting of advertising statements or claims which he knows or believes to be false, deceptive or grossly exaggerated.") and a provision relating to enforcement ("the Board of Directors shall investigate . . . charges [of code violations] and notify the station of its finding").[12] While the Code was untested, appeared to leave much room for flexibility, and had weak enforcement provisions, the Federal Radio Commission's admonition to broadcasters that they had better take care of programming and commercial improprieties or else "the Matter should be treated with proper legislation," must have strengthened the perceived importance of (and perhaps adherence to) the Code.[13] Engel points out that legislation facing broadcasters in those early years of commercial radio meant threats not only of content regulation, but threats of nationalization of the radio industry generally.[14] It should also be noted that these threats were not simply imagined. Radio was increasingly being regulated. Indeed, between 1933 and 1935 the NAB radio code of self regulation was given the status of law by the federal National Industrial Recovery Act.[15] That action was declared unconstitutional in 1935 and a new voluntary NAB radio code was established.[16] By 1935, radio regulation had been transferred primarily to the newly created Federal Communications Commission. The new FCC, the congress that was responsible for, among other things, the establishment of the FCC, the Federal Trade Commission, and other governmental organs, all continued to pose regulatory threats to the broadcast industry. Those threats have often been cited as the impetus for the existence of self regulation and for the revisions in the self

regulatory code. The accuracy and implications of the asserted link between government threats and self regulation will be discussed later.

The Structure and Operation of the NAB Code

In its earliest years, the NAB structure was informal and went through many changes. During those early years there was no separate entity to operate the Code. In 1937 the NAB reorganized and "a permanent president [was] elected and a staff appointed."[17] The radio Code was revised and formally adopted. The Code was again revised in 1939 to conform with the findings of "a survey of individual station program policies and codes of conduct."[18] At the same time a "Code Compliance Committee (made up of nine active broadcasters and one NAB staff secretary) was appointed to interpret and administer the Code."[19] In around 1950 or 1951, an NAB committee comprised of twelve broadcasters and chaired by Robert D. Swezy (WDSU-TV) wrote the first NAB Television Code which was adopted and became effective in 1952. A "five-member Television Code Review Board" with staff director was appointed then, to oversee the operation of the TV Code.[20]

Having undergone several structural changes over the years, the last Television Code Board consisted of nine broadcasters and the Radio Board consisted of eleven broadcasters. Board members were appointed by the president of the NAB and were to represent the interests of networks and stations in various sized markets.[21] These Boards generally met twice yearly.[22] Recommendations for changes in the Codes usually came from these Boards. Those recommendations would be subject to approval by the NAB Radio or Television Boards. The Code Boards worked with the Code Authority staff and reported to the NAB senior vice president and general manager of the Code Authority who, in turn, reported to the NAB's executive vice president and general manager.[23] The Code Authority operated three offices.

> The Hollywood office . . . review[ed] . . . toy commercials. It also assist[ed] many stations with their clearance operations.
>
> The New York office, because of its proximity to many large advertising agencies . . . [was] most active in commercial review.

> The Washington office . . . review[ed] subscribers' advertising practices to assist them with the implementation of the Code's advertising standards and guideline, and produc[ed] NAB Code publications.[24]

In addition to offering advice/review to member stations, networks, and advertisers, the NAB Code Authority also published a monthly newsletter, the Code News. This publication listed commercials that had been approved for broadcast (sometimes with restrictions as to appropriate time), changes in the Codes, meetings that might be of interest to Code members, stations that recently joined (or quit) the Code, etc. The Code News was sent to stations subscribing to the Codes and to other interested parties.[25]

The actual Radio and Television Codes themselves were also compiled and published by the Code Authority.[26] Both codes were prefaced with general platitudes about the importance of "honest, responsible and tasteful" broadcasting.[27] The Codes went into some detail (each code was over 30 pages long) regarding program standards, advertising standards, and the administration of the Code. In general the codes urged broadcasters to be sensitive to their audience, avoid offensive or deceptive programming or advertising, and avoid over-commercialization.

Code membership and the encumbant pledge to meet the Codes' rules was voluntary (though not free). Members could withdraw their subscription to the Code whenever they liked. The only official sanction the Code Authority had against a member who violated the Code was to revoke that member's subscription to the Code. A subscriber accused of violating the Code was entitled to a lengthy and complex hearing and review procedure. If the accused violator was found guilty of "intentional, continuing violation of either Code," the NAB Radio or Television Board could revoke the accused's membership in the Code.[28] While figures are unavailable from the NAB regarding the number of violators and accompanying sanctions, the NAB notes that despite the existence of the revocation process, "over the years, subscribers have demonstrated a willingness to work with Code staff in order to resolve any Code-related questions which may arise . . . ."[29] Flagrant violators of the Code could have lost their right to say they belonged to the Code, but little else could happen to them directly as a result of violating the Code. It is unlikely

that many audience members would turn to another station as a result of a station's being ousted from the Code. And while some advertisers might have cared and the FCC might have been interested, the broadcaster who lost the right to subscribe to the Code would probably be no worse off than the nearly five thousand radio stations and five hundred television stations that choose not to subscribe.

NAB Self Regulation - Criticisms

NAB efforts at self-regulation had been the subject of much criticism. Some critics argued that the Codes were too lenient, others that they were strong enough to pose antitrust problems. Still other critics took aim at the issue of accountability in the code-making process, suggesting that changes reflect political pressures more than concern for the public. An understanding of the Code and its implementation indicates there were at least grains of truth in all these observations.

The assertion that the Code was too weak has been made from nearly every segment of the broadcast-related interests. One major complaint was that Code membership was voluntary, and that penalties for non-compliance on the part of members were essentially non-existent. Critics point to the historical lack of enforcement of the Code.[30] Eric Engel wrote: "There can be little doubt that provisions of the Code are violated by subscribers with reasonable frequency."[31] Persky called the NAB's Code enforcement mechanism no more than "an exercise in public relations."[31] Criticism of the Code's leniency has come from at least one FCC Commissioner,[33] and one major broadcast group (Westinghouse) which pulled its stations out of the Code in 1969 because of the "Code's continuing failure to deal effectively with programming and advertising content" and because the Code "has not been tough enough."[34] Certainly, a Code of behavior to which subscription and adherence were purely voluntary and violation of which went largely unpunished, could not be considered to be very strong. On the other hand, Code member stations did seem to follow the code generally.[35] And non-member stations (even those not wanting to meet the Code standards) often met the Code's requirements because the network they were affiliated with complied with the Code, because the ads the stations showed had been made by companies which complied with the Code so as not to run into problems with Code stations, etc.

Reacting to criticisms of the Code's ineffectiveness, NAB President Wasilewski

remarked:

> Our Codes are regarded by some as merely protective devices--smokescreens with little substance--behind which we can hide to confuse the public and those who would regulate us.
>
> I would like to refute that point of view . . . . More than half a million dollars each year is devoted to Code activities and enforcement.[36]

Other NAB officials had also defended the strength and effectiveness of the Codes,[37] and some FCC actions endorsed the Codes as being sufficiently strong as to obviate the need for FCC regulation.[38]

Notwithstanding the claims of the Code's effectiveness, it must be noted that for broadcasters, the Codes did not demand strict adherence and were designed to be applied with flexibility.[39] The same may not have been true of the Code when its impact on non-broadcasters is examined. The United States Justice Department, in a 1979 case, asserted that the NAB Television Code advertising restrictions were effective enough to constitute a violation of the Sherman antitrust proscriptions. Specifically, the Justice Department argued that the Television Code's limits on the total amount of time that could be used for non-program material (commercials), the limits on the number of permissible commercial interruptions in each hour, and the proscriptions against advertisers advertising more than one product in commercials shorter than sixty seconds, all restrained advertising availabilities. The Justice Department contended that such limits artifically manipulated "the supply of commercial television time, with the end result that the price of time is raised, to the detriment of both advertisers and the ultimate consumers of the products promoted on the air."[40] The case was an interesting one on the merits and led to the demise of NAB self regulations. It was interesting because of the position it forced the NAB to take. After years of defending the effectiveness of its Codes, in this case the NAB attempted to minimize their effectiveness. The Court notes:

> The first defense upon which NAB relies is that the Code is voluntary, in the sense that no one is compelled to join and allegedly no sanctions are imposed for a violation.[41]

The US District Court for the District of Columbia, in a March, 1982 summary judgment on one aspect of the case, agreed with the Justice Department. Judge

Harold Greene's opinion (which applied only to the NAB proscriptions against more than one product or service being advertised in commercials of less than sixty seconds) noted that the Television Code's "influence is so pervasive that in real terms it stands between the nation's airwaves and even the most powerful business enterprise."[42] Greene ordered the NAB to "cancel and stop enforcing [this] Advertising Standard . . ."[43] regardless of the benefits such standards might have for the public. The Sherman Act prohibits anti-competitive practices such as this, Greene argued. "If there are to be exceptions from that policy in favor of other, different public interest considerations, they must be made -- and occasionally they have been -- by the Congress . . . ."[44]

Judge Greene's summary judgment was followed by a consent decree between the Justice Department and the NAB and accepted by the Court.[45] That consent decree prohibited the NAB from requiring or suggesting that its members adhere to advertising standards that might limit the quantity, length, or placement of broadcast commercials. Stations would, of course, be free to impose such limitations so long as they were the outgrowth of individual stations' policies, and not the result of shared initiatives.

Clearly the Codes had grown in length and complexity since their inception, but, Joel Persky asserted, the changes were not all they seemed to be. Persky argued that the nearly annual revisions of the codes were mere window dressing designed to give the appearance of being current and responsive to changing conditions.[46] Having studied the first and eighteenth editions of the Television Code, Persky maintained that few significant changes in the Code materialized in the twenty-three years between editions.[47] Persky's contentions do not necessarily follow from his own findings. He reported, for example, that 47.9% of the items in the eighteenth edition of the Television Code were "new material, items appearing in the [Code] for the first time."[48] While it is reasonable to suggest that non-quantitative measures be used to compare editions of the Code, so long as Persky relied on a quantitative content analysis, it is curious that he would not find major changes in nearly fifty percent of the items (even higher if less complete changes are included) significant.

Persky's analysis also failed to comprehensively deal with a more difficult (perhaps impossible) aspect of the changing codes. As is the case with any form of

regulation, meaning is in the interpretation of the regulations as much, if not more, as it is in the text of the regulations. Since the meaning to broadcasters, advertisers, the NAB, and the public of "appropriate programming" no doubt changed over the years, Code regulations that had not changed in wording since their inception may have been interpreted differently by all concerned.

Of related concern was the assignment of responsibility for changing the codes. Clearly one vector of change came from the economic interests in broadcasting. Advertisers and broadcasters succeeded in narrowing some advertising restrictions such as those prohibiting the airing of commercials for hemorrhoid and feminine hygiene products. Such pressure was not always successful, probably because the requested changes went farther than many broadcasters believed would be in their best interests. And without strong coalitions of support of advertisers and broadcasters, political gears failed to turn.

In addition to advertiser pressure for Code revisions, there were governmental pressures for Code changes. On the negative side, court findings that some Code provisions were illegal were effective change agents. But the government's impact on the Codes was not limited to striking down parts of them. There is substantial evidence to support the contention that various federal government officials pressed for the adoption of some Code provisions, and even more evidence to suggest that the Code Boards considered changes in the Codes to avert feared government intervention.

When Dean Burch was Chairman of the FCC, unable or unwilling to have the FCC try to limit the number of commercial minutes aired on children's programs, "he suggested that the NAB Code be tightened" to limit such commercials.[49] Burch's successor, Richard Wiley, followed in the same footsteps, warning "that if the industry failed to take any action, the government would be forced to."[50] Wiley met with the president and senior executive vice president of the NAB in 1974 and

> made it plain that if the NAB code were amended to restrict commercials on children's programs . . . , and if the NAB would help him persuade <u>all</u> TV stations to adhere to these standards, the FCC would not--as long as he was chairman--pass rules that would cast these standards in concrete.[51]

Wiley continued meeting with NAB executives on this issue and within a month succeeded in having the NAB revise its TV Code as he wanted it. Television Digest reported that "There was open resentment to the role played by Wiley in forcing code action."[52] Similar pressure was used successfully in getting the television industry to adopt the so-called "family viewing time."

Less successfull (from the government and perhaps, later, even broadcasters' perspectives) was the attempt to get the NAB Code revised to more effectively reflect the anti-cigarette advertising sentiments of the late 1960s. The Code Boards noted that while they recognized the concerns about cigarette smoking, they were not prepared to do much about it. The Radio Code Board, for example, minimized the role of broadcast advertising when it reported: "One concern, and only one of them, is the possible influence of advertising to encourage minors to smoke cigarettes." Because there was a lack of definitive proof that such commercials played a major role in encouraging minors to smoke, the Radio Code Board went on, "we are not prepared at this time to propose formal amendments to the Radio Code."[53]

By the late 1960s, in the face of pending congressional action that would have eliminated the broadcast advertising of cigarettes, the Radio and Television Code Boards proposed a plan to phase out cigarette advertising gradually between 1970 and 1973.[54] Such a proposal would, of course, be unenforceable. It was too little, too late. Congress banned broadcast cigarette advertising. Engel surmised that "the lesson was not lost on the NAB."[55]

The NAB established special committees and had special concerns with or studies of several issues of more recent vintage. Responding to the FCC at special Commission hearings about children's programming, Director of the Code Authority Helffrich, noted that the NAB had established a standing committee on children's advertising.[56] Responding to the House Select Committee on Aging, NAB vice president and Code Authority General Manager, Jerome Lansner, reported that the Code Board was meeting with the Gray Panthers and was sensitive to the issues of the aged.[57] Such testimony by NAB representatives could have but one objective, to foster the image that broadcasters are responsible and responsive to the needs of the public. The logical progression from that assumption would be that therefore there is less need for government intervention in, or regulation of, broadcasting.

COMMENTS

Broadcast self regulation, as practiced by the NAB, appears to have fit the mold of industrial self regulation generally. While the Codes appear to have had some impact on broadcast content--impact that even many non-broadcasters would rate positively--that impact was unenforceable and was ultimately designed to meet the interests of the broadcasters.

Interestingly, those broadcaster interests may now best be met without a Code, Shortly after the Consent Decree, the NAB disbanded its Code Boards and threw out its Codes.[58] Such actions went far beyond what was required by the Consent Decree. As an action entered into freely, one can only surmise that the NAB no longer felt a Code was in its best interests. In an era of "unregulation," perhaps the NAB believed that it no longer needed the Code as a device to keep regulators from interfering with broadcasters. Indeed, perhaps the very existence of a Code that reinforced the notion that broadcasting was somehow different from other media and should treat people in their homes with a special degree of care might have impeded broadcasters' efforts to gain regulatory parity with other media.

In any case, the loss of the NAB's Codes should not significantly alter the degree to which the public is protected. Those self regulations, designed as they were to protect their framers, could never be relied on to serve interests of non-broadcasters.

NOTES

1. Louis Jaffe, "Law Making by Private Groups, " Harvard Law Review, XII 51 (1937).

2. Neville Miller, "Self-Regulation in American Radio," The Annals of the American Academy of Political and Social Science Vol. 213 January 1941, p.93.

3. See: Robert R. Dykstra, The Cattle Towns (Forge Valley, Mass: Atheneum, 1968).

4. Jonathan Lurie, The Chicago Board of Trade: 1859-1905, The Dynamics of Self-Regulation. (Chicago: University of Illinois Press, 1979), p. 199.

5. Ibid.

6. Ibid., pp. 105, 200

7. See: Bruce M. Owen, and Ronald Braeutigan, The Regulation Game: Strategic Use of the Administrative Process (Cambridge, Mass: Ballinger, 1978), p. 6.

8. Fred S. Siebert, Theodore Peterson, and Wilbur Schramm, Four Theories of the Press (Urbana: University of Chicago Press, 1956), p. 45.

9. Ibid., p. 74.

10. Eric Engel, and Dee Pridgen, "The History of the National Association of Broadcasters and the Development of the Television Code," Federal Trade Commission Memo, February 9, 1981, p. 1.

11. Ibid., p. 3.

12. Ibid., pp. 4-5.

13. Ibid., p. 6, citing "Warning Issued on Blatant Advertising: Commission Proposes Self-Regulation to Stave Off Congressional Action, Upholds American System," Broadcasting January 1, 1932, p. 12 at 22.

14. Ibid., p. 6.

15. Bruce A. Linton, Self Regulation in Broadcasting (no location given: Bruce A. Linton, 1967), p. 12.

16. Ibid.

17. "History of the Code," NAB Code Authority Memorandum, Washington, D. C., 3-31-78, mimeo.

18. Ibid., p. 1.

19. Ibid.

20. Ibid., p. 2.

21. "Functions & Procedures of the National Association of Broadcasters Code Authority," NAB mimeo, December, 1981, p. 1.

22. Interview with Claire Jarvis, NAB Code Authority, former editor of Code News. December 29, 1981, Washington, D.C.

23. "Functions and Procedures of NAB Code Authority," pp. 1-2.

24. Ibid., p. 1.

25. On November 1, 1981, there were 4,301 Radio Code subscriber stations and 516 TV Code subscriber stations, as well as four radio and three TV networks. NAB, Code News. December, 1981, p. 6.

26. The last editions of the TV and Radio Codes were the 22nd and 23rd, respectively.

27. NAB Television Code, July, 1981, p. 1.
NAB Radio Code, July, 1981, p. 1.

28. "Functions & Procedures of NAB Code Authority," p. 3.

29. Ibid.

30. See: Barry Cole and Mal Oettinger, Reluctant Regulators, Rev. (Reading, MA.: Addison-Wesley, 1978) p. 306,

Dee Pridgen and Eric Engel, "Advertising & Marketing on Cable Television: Whither the Public Interest?" Catholic University Law Review, Winter, 1982, and John R. Bittner, Broadcast Law and Regulation (Englewood Cliffs: Prentice Hall, 1982).

31. Engel, "History of the NAB," p. 24, See also: Cole and Oettinger, Reluctant, p. 306.

32. Joel Persky, "Self Regulation of Broadcasting - Does it Exist?" Journal of Communication, Spring, 1977, p. 204.

33. "NAB TV Code Board Blasted by FCC's White, Belo Co.'s Shapiro," Variety May 4, 1977.

34. Donald H. McGannon, "Is TV Code a Fraud?" TV Guide January 22, 1977.

35. See: Code News, November, 1981.

36. "Wasilewski Favors Strong NAB Codes," Code News March 1965.

37. US v. NAB, D.D.C., Summary Opinion of Judge Harold H. Greene, #79-1549, mimeo, Opinion pp. 23-24.

38. Ibid., p. 24, n. 63, citing Children's Television Report & Policy Statement 50 FCC 2d 1, 13 (1974), and Report and Order 36 FCC 45, 50 (1964).

39. In 1977, for example, the NAB relaxed its Radio Code "to allow NAB radio code members to exceed [the commercial limits] 'for good cause . . .' ." Cole and Oettinger, Reluctant, p. 301. On the other hand, it is reasonable to speculate that the reason at least some stations refuse to subscribe to the code is that even with the code's flexibility, they find it too restrictive.

40. US v NAB, Opinion p. 1.

41. US v NAB, Opinion p. 21

42. Ibid., p. 24. Similar rationale was used by the courts when the NAB's "Family Viewing Time" provisions were deemed illegal.

43. US v NAB, Order.

44. US v NAB, Opinion p. 24.

45. US v NAB, D.D.C., 1982-83 Trade Cases (CCH) ¶65,049, 65,050.

46. Persky, "Self Regulation," p. 206.

47. Ibid., pp. 208-9.

48. Ibid., p. 208.

49. Cole and Oettinger, Reluctant, p. 263.

50. Ibid., p. 274.

51. Ibid., p. 276

52. Ibid., p. 277.

53. Radio Code News February 12, 1964.

54. Code News July, 1969, pp. 1, 3.

55. Engel, "History of the NAB," p. 27.

56. Code News October, 1972.

57. Code News February, 1978, p. 2

58. Telephone interview with Kathy Arnold, NAB Legal Department, January 21, 1983.